Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3357 (S/S) of 2001

State of Uttaranchal through its Executive Engineer,
Lakhwr Bandh Nirman Khand, IVth Dehradun.

..... Petitioner

Versus

1. Presiding Officer, Labour Court, Dehradun.
2. Sila Devi W/o Sri Harpal R/o Near Nala Yamuna Colony, Dehradun.

..... Respondents.

Shri Nand Prasad, learned standing counsel for the petitioner.
Shri Gopal Narain, learned counsel for the Respondent No.2.

Dated: 01.09.2005

Hon'ble P.c. Verma, J.

This writ petition has been filed by the petitioner-seeking writ of Certiorari quashing the impugned judgment and award dated 20.11.2000 passed by Respondent No. 1 in Reference Case No. 95 of 2000 whereby the learned labour Court has directed the petitioner to reinstate Respondent No. 2 in the service with full back wages.

2. Brief facts of the case are that Respondent No. 2 was engaged as Sweeper with the petitioners' establishment in the year 1983 and she worked as such till 11.07.1998. On 11.07.1998, the services of Respondent No. 2 were terminated without any rhyme or reason. Feeling aggrieved, the Respondent No. 2 raised the industrial dispute, which was referred in the following terms:

> **"Whether the termination of the services of the applicant/workman Smt. Shila Devi W/o Shri Harpal, Sweeper by the empoyers from 11.07.1998 is unjustified and / or illegal? If so, to which benefit/ compensation the applicant/workman is entitled and to what extent?"**

3. The Labour Court issued notices to the parties to filed their written statement/ objections. No documentary evidence was produced by any of the parties and the workman also did not produce the year wise and month wise statement of working days on which she has worked. Hence, the Labour Court ordered that the termination order of the workman dated 11.07.1998 was illegal and unjustified and held that same has been passed in violation of provisions of Section 6-N of U.P. Industrial Disputes Act, 1947 **(hereinafter referred to as the Act)** and accordingly ordered for her reinstatement with full back wages. Feeling aggrieved, the petitioner has come up in the writ petition.

5. I have heard learned counsel for the parties and perused the material on record.

6. The learned Tribunal has rightly recorded the finding that even after the direction of the court, the employers were not able to produce the year wise and months wise statement of the Respondent No. 2 by which it could have come out that for how many days the Respondent No.2 had worked, therefore, the Tribunal held that the workman has worked for more than 20 days in the petitioner's establishment. Therefore, the Labour Court rightly held that since the workman had worked for more than 240 days in the petitioner's establishment before the date of retrenchment, she was deemed to be in continuous service and hence her termination was in violation of Section 6-N of the Act was illegal and accordingly ordered for reinstatement with full back wages.

7. In view of the above, I am of the considered opinion that the Tribunal rightly held that the services of the workman was terminated without any notice which is in clear cut violation of the provision

contained under Section 6-N of the Act and the finding recorded regarding violation of provision of Section 6-N of the Act is based on record.

8. I do not find any infirmity or perversity in the award impugned. However, in my opinion the full back wages as awarded by the Tribunal is grossly excessive and it should be reduced. Therefore, it is provided that the Respondent No. 2 shall be entitled only for 25% back wages. This portion of the award of the Labour Court should be reduced to this extent only.

9. The writ petition is partly allowed. The workman/Respondent No. 2 shall be entitled for 25% back wages.

(P.C. Verma, J.)

Rajeev Dang